

REMARKS

I. Status of the Claims

Claims 1-21 are pending. Claims 1, 17 and 20 are independent claims. The specification, at page 9, line 28, and at page 14, line 3, has been amended to address minor informalities. Likewise, claim 5 has been amended to address minor informalities. No new matter has been added.

II. Citation of References

The 892 Form provided by the Examiner does not include any citations of prior art. The Examiner is respectfully requested to complete the 892 Form, which should at least include U.S. Patent No. 6,231,900 (Hanke), applied by the Examiner in a rejection. Also, the Examiner has not initialled the citations of non-U.S. patent documents on the 1449 Form to indicate that those references have been considered including WO 99/59427, which was applied by the Examiner in a rejection. The Examiner is respectfully requested to initial those citations and provide a copy of the completed 1449 Form.

III. Rejections under 35 U.S.C. § 103

Claims 1-21 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over a combination of WO 99/59427 (WO '427) and U.S. Patent No. 6,231,900 (Hanke). Claim 19 is additionally rejected over these two references in view of U.S. Patent No. 6,099,880 (Klacik). The rejections are respectfully traversed and reconsideration is requested based on the following remarks.

Present claim 1 recites a salivation agent in a confectionery base and an oral comfort ingredient also in a confectionery base. The two functional ingredients are

separated from each other in distinct regions. As set forth in the present specification at page 11, lines 29-30, an oral comfort ingredient is one that lubricates, coats and/or moistens the oral cavity. As further set forth in the specification at page 12, lines 4-6, and claimed for example in claim 9, the oral comfort ingredient is preferably selected from lipids, proteins and surfactants.

An important aspect of providing a salivation agent and an oral comfort ingredient in separate regions is set forth at page 6 of the specification:

having the salivation agent concentrated in one region of the product enhances the initial salivation effect and promotes mechanical action or movement of the piece throughout the mouth. In particular, because of the separation of the two regions, greater amounts of salivation agent may be used resulting in an increased initial impact causing enhanced oral manipulation, but still with acceptable taste. (Emphasis added.)

Neither WO '427 nor Hanke teaches the separation of a salivation agent and an oral comfort ingredient. In fact, contrary to the examiner's assertion, there is no disclosure in either reference of an oral comfort ingredient. To the extent that WO '427 discloses using an ingredient to promote salivation, it is admitted prior art (see WO '427, page 1, lines 19-20). Hanke discloses the use of an acidulent, but not to promote salivation, and the ingredient is found in both regions, i.e., not separated from any other component by any means. (See, e.g., Hanke col. 8, lines 1-6.) Moreover, the disclosures in WO '427 and Hanke are such that one of ordinary skill in the art would not have been motivated to combine the references. Applicants respectfully submit that the rejection of the subject claims cannot be reasonably maintained.

WO '427 teaches a method for segregating acid components in a comestible product from the flavorings in the product which may be acid sensitive (see page 2, lines 19-21). The acid components are co-processed with a sugar alcohol to prevent degradation of the acid-sensitive ingredients prior to consumption (page 2, lines 21-25). The method allegedly improves on the known systems of encapsulation, for example, in which acid-sensitive flavor components are coated with fat, protein or hydrocolloid.

The encapsulation methods are said to deleteriously affect taste (page 2, lines 7-8). In contrast, co-processing the acid with a sugar alcohol is said to keep the acid-sensitive ingredients from degrading until activated in the mouth. Significantly, when in the mouth and activated by saliva, the flavor and acid are perceived at the same place and at the same time. (See page 4, lines 24-27.) They are not separated. "Segregation," as used in the WO '427 disclosure has nothing whatever to do with separation of components in orally identifiable distinct regions or with distinct sensory perception of two components. To the contrary, the flavor and acidulent interact when they are consumed, which teaches away from providing them in separate regions, which is the combination suggested by the Examiner.

The WO '427 disclosure describes the use of acidulent flavor enhancers in combination with flavorants at page 1, lines 22-25. In fact, avoiding the development of undesirable flavor notes in these circumstances is described as being of "utmost concern" (page 1, line 30). This overall objective is consistent with the food product described throughout the WO '427 disclosure, wherein the acidulent flavor enhancer co-processed with a sugar alcohol is intimately admixed with a flavor component throughout the

product. Nothing in the WO '427 disclosure suggests a separation of components into discrete regions, which is critical to the presently claimed invention.

Hanke does not disclose separate regions with a salivation agent and oral comfort ingredient, respectively. Instead, Hanke discloses a confectionery product having a region with a cooling composition and a region with a flavor composition. Cooling compositions are known in the art (see Hanke, col. 4, line 1, col. 5, line 63), and are clearly understood in the art to be distinct from an oral comfort ingredient (see the present specification at least at page 12, lines 1-2). Significantly, both regions in Hanke are provided with an acidulant (see Hanke, col. 8, lines 1-10). To the extent that Hanke teaches any ingredient that might read on the claimed salivation agent, Hanke teaches away from the claimed combination by showing the ingredients in both regions of the disclosed confectionery product.

Klacik does not overcome the deficiencies of the primary reference and does not disclose the claimed combination of a salivation agent and oral comfort ingredient in separate regions to achieve the described and claimed advantages. Thus, Klacik, alone or in combination with the primary references, does not render any of the pending claims unpatentable.

A prima facie case of obviousness under 35 U.S.C. § 103, requires a factual inquiry into the differences between the claimed invention and the prior art. Graham v. John Deere Co., 383 U.S. 1 (1966). To the extent that none of the references discloses an oral comfort ingredient (or any ingredient included in an amount effective to lubricate or coat an oral cavity) the Office Action does not address relevant differences between the claimed invention and the prior art. No combination of the cited references yields a confection

having a salivation agent and an oral comfort ingredient provided in separate regions, such that the concentration of salivation agent in a particular region causes increased oral manipulation which enhances salivation, while the oral comfort ingredient, located in a separate region, lubricates or coats the oral cavity.

Further, a prima facie case cannot ordinarily be made out where the references themselves teach against the asserted combination. See, e.g. W.L. Gore v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). In the present case, WO '427 teaches the presence of an acidulating agent to enhance a flavor component. Accordingly, these components are provided mixed together in the product. This is opposite in effect from the claimed confection, which requires separation of components. Likewise, Hanke teaches a product having multiple regions, but the acidulating agent is present in both disclosed "regions," and it could not have been obvious from that starting point to separate an acidulating agent from any other component. The references teach away from providing a salivation agent and an oral comfort ingredient in separate regions.

IV. Conclusion

For at least the foregoing reasons, applicants submit that the present claims are patentable over the cited references and respectfully request allowance and prompt passage of the application to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our address given below.

Respectfully submitted,

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Attorney Docket No. 02280.002660
Application No. 09/825,992

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APPENDIX A - MARK-UP
SHOWING CHANGES TO THE SPECIFICATION

Page 9, line 27 - Page 10, line 8 has been amended as follows:

The salivation region of the confectionery product will contain [an] a salivation agent in combination with the confectionery base. The salivation agent is present in an amount effective to promote salivation in the oral cavity. Any orally acceptable compound that promotes salivation in the oral cavity may be used as a salivation agent. Exemplary salivation agents include acidulents, cooling compounds, salts, salt enhancers, monosodium glutamate (MSG), MSG enhancers, flavors and mixtures thereof. Acidulents are a preferred salivation agent. Exemplary acidulents include citric acid, malic acid, succinic acid, adipic acid, tartaric acid, acetic acid, lactic acid and mixtures thereof.

Page 13, line 31 - Page 14, line 13 has been amended as follows:

This invention is also directed to a method of preparing a confectionery product having [an] a salivation region and an oral comfort region that is separate and distinct from said salivation region. The method comprises the steps of forming a salivation agent containing confectionery base by mixing a salivation region confectionery base and a salivation agent and forming an oral comfort ingredient containing confectionery base by mixing an oral comfort ingredient with an oral comfort confectionery base. The confectionery of this invention is then formed in a manner that maintains the salivation agent containing

confectionery base and the oral comfort ingredient containing confectionery base in separate and distinct regions of the confectionery product.



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APPENDIX B - MARK-UP
SHOWING CHANGES TO CLAIM 5

5. The confectionery product according to claim 4, wherein said sugarless bases are selected from the group consisting of isomalt, erythritol, hydrogenated starch hydrolysates, sorbitol, xylitol, mannitol and [mixture] mixtures thereof.

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